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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 291 Misc.

ROBERT MORALES, ET AL.,
Petitioners

vs.

CITY OF GALVESTON, ET. AL.,
Respondents

RESPONDENT CITY OF GALVESTON'S REPLY TO PETITION FOR CERTIORARI

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Respondent City of Galveston denying jurisdiction as to it and denying error, respectfully prays that the Petition be denied.

STATEMENT AND ARGUMENT

This suit was originally brought both against this Respondent, City of Galveston, as owner and operator of the grain elevator on charges of actual negligence and against the shipowner and operator, Cardigan Steamship Company, Ltd., on charges of unseaworthiness and, in addition, actual negligence. But as this case has unfolded, for practical purposes, it is now limited to a controversy between the Petitioner longshoremen and the Respondent Cardigan Shipping Company, Ltd. as to the application of the doctrine of unseaworthiness.

As to us—the City of Galveston—the Trial Court found we were not negligent as a matter of fact (181 F. Supp. 191). The Court of Appeals for the Fifth Circuit affirmed for us on these same fact questions.

This Court in remanding the case to the Court of Appeals dealt only with the controversy as between Petitioners and Cardigan. No reference was made to us. We are not involved in the subject matter of this Court's original opinion, i. e., the liability of a shipowner (364 U. S. 295).

A review of Petitioners present application discloses that we are not now substantially involved.

The three "Reasons Relied Upon for the Allowance of the Writ" (Petition, Pg. 4) deal solely with the charge of unseaworthiness. The City of Galves-

ton is not involved on these points. The City owned and operated the grain elevator; it had nothing to do with the ownership and operation of the ship.

As to the claims of the Petitioners in the Trial Court as set forth on Pgs. 6-7 of the Petition, Petitioners alleged that we (the City) fumigated the grain while it was in the elevator. The Trial Court found that we did not (Findings of Fact No. 5- Tr. Pg. 82; No. 6, Tr. Pg. 84; No. 12, Tr. Pg. 87). This finding of the Trial Court is not attacked here.

Petitioners also alleged in the Trial Court that by reason of prior incidents, we were put on notice to exercise a high degree of care. (See—Petition, Pg. 7). But these prior incidents involved findings, or allegations, to the effect that the City fumigated the grain (Finding No. 17—a finding not attacked here). Since the City did not fumigate the grain here, these prior incidents have no materiality, except to show that whereas before the City had fumigated the grain, it did not do so here and thus, in connection with the allegation of prior incidents, here had fully complied with all duties relative to such prior incidents by not doing at all the acts complained of there.

Petitioners third claim (see—Petition, Pg. 7) was that even though the City did not fumigate the grain, it should have had more inspection. The Trial Court found against this claim by Findings 7, 8, 12, 14, 15 and 16 (Tr. Pgs. 84-89).

Therefore, the Trial Court's findings on the facts

were against Petitioners on each theory asserted by them on trial. The Court of Appeals affirmed these findings in its original opinion. This Court in reversing as between the shipowner Cardigan and Petitioners did not mention us or upset these findings in any way.

We cannot accept Petitioners' statement of "The Undisputed Facts". (Petition, Pg. 9). We respectfully call attention to our Brief in the Court of Appeals, Pgs. 3-25, as correctly showing the facts proved on trial.

The argument from Pgs. 7-22 of the Petition relates to the "unseaworthy" controversy and does not involve u

With respect to the argument commencing on Pg. 23 of the Petition, insofar as they relate to us,—we answer:

(a) The prior incidents referred to involved fumigation by the City of the grain while it was in the City's elevator. Here the Trial Court found that the City did not fumigate the grain at all (Findings No. 5, Tr. Pg. 82; No. 6, Tr. Pgs. 84; and No. 12, Tr. Pg. 87) and that any fumigation was done at some inland point prior to the grain's coming into the possession or control of the City. (Finding No. 12, Tr. Pg. 87). No attack on these findings is made by the Petitioners here and in addition, the evidence to demonstrate the correctness of these findings (and the Court of Appeals' affirmance of them) may be found on Pgs. 3-16 of our Brief in the Court of Appeals. We refer to our

Brief there for reference on these fact questions because otherwise we would have to simply repeat the same summary here.

(b) The City did not know and in the exercise of reasonable care should not have known that the grain which went aboard the "GRELMARION" had been improperly treated with an excessive amount of fumigants in an inland elevator prior to coming into the possession or control of the City. (Findings 7, 8, 12, 14, 15 and 16, Tr. Pgs. 84-89). No attack on these findings is made here and in addition, they are fully sustained by the evidence as shown on Pgs. 16-19 of our Brief in the Court of Appeals.

(c) In addition, actually the City did inspect the grain in a reasonable manner. (Findings 7, 8, 15 and 16) - see Pgs. 19-23 - our Brief in the Court of Appeals. Petitioners make no reference to these findings in their Petition here.

(d) Also, any additional tests would have been unavailing. (Finding 16) - see Pgs. 23-25 - our Brief in the Court of Appeals. Again Petitioners make no reference to this finding in their Petition here.

Petitioners' argument on Pgs. 23-29 of the Petition (which is the only portion of the Petition even claiming liability against the City) is practically a verbatim lifting of the same argument out of the Petitioners' Brief in the Court of Appeals (and repeated at Pgs. 20-29 in their former Petition for Certiorari). These arguments are on the fact questions

and a full reply would involve a complete requoting of Pgs. 3 to 36 of our Brief in the Court of Appeals. Additional copies of this Brief were furnished to the Clerk of this Court on the former petition and we respectfully request this Court to consider and refer to our Brief in the Court of Appeals for a full reply on these fact questions.

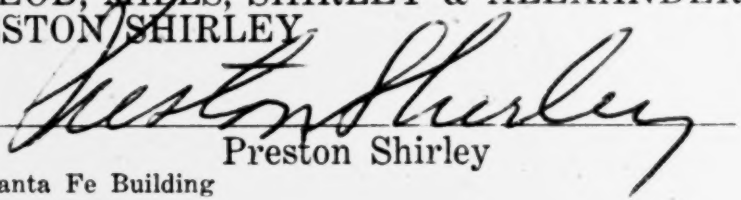
The only other point made in the Petition, as involves us, is the alleged inadequacy of damages (Pgs. 29-35). This argument is substantially the same as previously made in the Court of Appeals and our reply is found on Pgs. 36-44 of our Brief in the same Court.

CONCLUSION

The Respondent City of Galveston therefore respectfully prays that certiorari be denied and in the alternative that any grant of certiorari be limited to the controversy between Petitioners and the Respondent Cardigan Shipping Company, Ltd.

Respectfully submitted,

McLEOD, MILLS, SHIRLEY & ALEXANDER
PRESTON SHIRLEY

By 
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ATTORNEYS FOR THE RESPONDENT,
CITY OF GALVESTON

I certify that a copy of the foregoing Respondent City of Galveston's Reply to Petition for Writ of Certiorari has been mailed on the 21 day of July, 1961, to Mr. Arthur J. Mandell, Mandell & Wright, Seventh Floor, South Coast Building, Houston 2, Texas, attorney for Petitioners, and to Mr. Edward W. Watson, Eastham, Watson, Dale & Forney, United States National Bank Building, Galveston, Texas, attorney for Respondent, Cardigan Shipping Company Ltd.

Of Counsel for Respondent
City of Galveston